IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4646 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

PWD EMPLOYEES UHION

Versus

STATEOF GUJARAT

Appearance:

MR PC MASTER for Petitioners

MS SIDDHI TALATI for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 14/10/1997

CAV JUDGEMENT

The petitioner No.1 is the Employees' Union while the petitioners No.2 and 3 were the employees of the respondent No.2 at one point of time. This Special Civil Application has been filed by the petitioners No.2 and 3

for exposing their own cause in the matter of termination of their services, but the Union has also been joined, which, in my opinion, was neither necessary nor proper party. According to the principle of service jurisprudence only an employee who has some grievance regarding his service matter, can file the petition. However, if the employee concerned belongs to the category of "workmen" and the employer is an "industry" then the employees' Union can expose the cause of the employees, but it has to be taken through the redressal forum as provided under the Industrial Disputes Act, 1947, or the Bombay Industrial Relations Act, 1946. However, as the petition is of the year 1984 and the concerned employees are also parties to this petition, I do not consider it to be necessary to go into this question any more.

The petitioners No. 2 and 3 were admittedly appointed as daily wagers in Ukai Dam Project. They worked there for about three years and thereafter their services came to be terminated. Earlier, a petition being Special Civil Application No. 3607 of 1982 has been filed before this Court by the petitioner No.1 with a prayer to restrain the respondents from terminating the services of the employees. Interim relief has also been prayed for in the said petition, but this Court has ultimately vacated the interim relief and it has been held that the respondents shall, while terminating the services of such class of employees, take care of the rule of "last come first go".

In the reply to the Special Civil Application the respondents have come out with their case, to which the petitioners have not filed any rejoinder, that while terminating the services of the petitioners No.2 and 3 the rules and the directions given by this Court in the Special Civil Application No. 3607/82 were followed and as such no grievance should have been made by the petitioners by filing this Special Civil Application. In the reply the respondents have further come out with the case that the petitioners No.2 and 3 were engaged on nominal muster roll and their services have been terminated on completion of particular work for which they were engaged.

So from the reply to the Special Civil Application as well as from the writ petition, it is clear that the petitioners No.2 and 3 were engaged by the respondents on daily wage basis in connection with a project which has been completed and as a result thereof their services were dispensed with. The project was

relating to Ukai Dam i.e. a Project of the Irrigation Department of the Govt. of Gujarat. In this Special Civil Application a prayer has been made by the petitioners for reinstatement of the petitioners No.2 and 3 by quashing and setting aside the oral order of termination of their services. Though it has not been specifically pleaded by the petitioners in this Special Civil Application, by necessary implication it turns out that the termination of the services of the petitioners No. 2 and 3 are stated to be made in violation of the provisions of Section 25F of the Industrial Disputes Act, 1947.

However, if we go by the title of the Special Civil Application then it would become clear that the petitioners are making complaint of violation of the provisions of Articles 14 and 16 of the Constitution as also the provisions of the Industrial Disputes Act, 1947. So, I consider it to be appropriate to examine the validity of termination of services of the petitioners No.2 and 3 with reference to both the provisions of the Industrial Disputes Act, 1947, and the provisions of Articles 14 and 16 of the Constitution.

First of all I consider it to be appropriate to examine the validity of termination of services of the petitioners No.2 and 3 with reference to the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). Section 25F of the Act provides that if employees are to be retrenched then before terminating their services it is incumbent on the employer to give one month's notice or one month's salary in lieu of notice as well as to pay retrenchment compensation at the rate as prescribed in the said provision. In this case a petition being Special Civil Application No.3607 of 1982 has been filed by the petitioner No.1-Union having apprehension of the termination of services of many of the employees, may be inclusive of the present petitioners No.2 and 3 and this Court has vacated the interim relief and it has been held that termination of services should have been made in accordance with the principle of 'first come last go'. Notice also has to be given. In this case it comes out from the reply to the Special Civil Application that notices regarding termination of services were sent to the petitioners No.2 and 3, but they refused to accept the notices. So, the respondents have complied with the provisions of the Act. But it is a different matter that the petitioners No.2 and 3 have chosen not to accept the notice. The fact that before terminating the services of the petitioners No.2 and 3 notices were sent to them, is

not in dispute as the petitioners have not filed any rejoinder to the reply filed by the respondents. Otherwise also in view of the decision of the Honourable Supreme Court of India in the case of Executive Engineer (State of Karnataka) v. K. Somasetty and Others reported in 1997(5) SCC 434, the provisions of the Act are not applicable to the present case. Admittedly, the petitioners No. 2 and 3 were engaged in connection with Ukai Dam Project. Their Lordships of the Supreme Court in the case of Executive Engineer v. Somasetty (supra) held that Irrigation Department is not an 'industry' within the meaning of the definition of the term "industry" given under the Act. Irrigation work is considered to be one of the functions of the public welfare of the State and such function of public welfare is a sovereign function. The Honourable Supreme Court in the decision aforesaid has further held that it is the constitutional mandate under the Directive Principles, that the Government should bring about welfare State by executive and legislative actions. Under these circumstances the State is not an "industry" under the Industrial Disputes Act. In view of this decision of the Honourable Supreme Court of India even if it is considered that the respondents have violated some provisions of the Industrial Disputes Act, 1947, no writ of mandamus or any other writ can be issued in the matter as the respondents are not "industry" within the meaning of the Industrial Disputes Act.

Otherwise also, on merits the petitioners have no case whatsoever. In the case of the Executive Engineer v. K. Somasetty (supra) the Honourable Supreme Court of India held that daily-wagers, who have been appointed in a Project which has been closed, have no right to the post. It is also the case of the respondents that the petitioners No.2 and 3 are engaged on daily-wage basis for the work of a particular project and that their services have been terminated on completion of the said project. Therefore, on merits also the claim made by the petitioners in this petition stands answered by the decision of the Honourable Supreme Court.

I may now examine the matter with reference to the provisions of Articles 14 and 16 of the Constitution of India. From the Special Civil Application and particularly from the documents annexed thereto, it comes out that the petitioners have also made representations for regularisation of their services in the Ukai Dam Project. I fail to see any illegality or arbitrariness in the action of the respondents in terminating the services of the petitioners No.2 and 3 once the Project

for which the petitioners No.2 and 3 were employed on daily wage basis, has been completed. Thus, they have no right whatsoever to be continued on the posts. Similarly, there is no legal obligation or any duty cast upon the respondents to continue this class of persons by engaging them on some other project or in some other department or in the same department. In the case of the Executive Engineer v. K. Somasetty (supra) this aspect of the matter has been considered by the Honourable Supreme Court and as stated earlier, it has been held that daily-wagers have no right to the post on closure of the project. In this respect I consider it to be appropriate now to refer to three more decisions of the Honourable Supreme Court of India, the details of which are as under:

(1) JT 1996(1) SC 214 State of H.P. v. Ashwin Kumar

(2) JT 1996(1) SC 220 State of H.P. v. Nodha Ram

(3) 1996(7) SCC 562 State of H.P. v. Suresh Kumar Verma

The learned counsel for the petitioners, during the course of argument by placing reliance on the following decisions of the Honourable Supreme Court of India and this Court, has contended that as the petitioners No.2 and 3 have worked for about three years as daily-wagers the respondents should have come out with some Scheme to retain them in service and to regularise their services also.

(1) AIR 1974 SC 1166 Management of M/s.Willcox Buckwell India Ltd. v. Jagannath

(2) AIR 1991 SC 1253 (1257) No case on these two pages

(3) 1978 GLR 1070 No case on this page.

The contention raised by the learned counsel for the petitioners cannot be accepted. The decisions on which reliance has been placed by the learned counsel for the petitioners are of little help to him in this case. The latest decision of the Honourable Supreme Court is very clear on the point that where appointment shall be made on temporary post or on daily wage basis in connection with some Project, then on completion of the project work the employees have no right whatsoever to be

continued in service or to be regularised or to be taken elsewhere in service. In view of the aforesaid decisions of the Honourable Supreme Court of India, no such direction can be given to the respondents to frame any scheme for regularisation of the services of this class of persons. Similarly, in view of catena of decisions of the Supreme Court of India, termination of services of the petitioners No.2 and 3 cannot be said to be arbitrary or unjustified.

The last contention raised by the learned counsel for the petitioners is that termination of services of the petitioners No.2 and 3 was made against the orders passed by this Court in Special Civil Application No. 3607 of 1982. The order of this Court passed in the aforesaid Special Civil Application has not been produced on record. However, from the undisputed facts of the case which have come on the record, it is clear that this Court in the aforesaid petition, has given a direction to the respondents to terminate the services of the daily-wagers, who have been employed on the Project on completion of the Project according to the principle of 'last come first go'. The respondents have very categorically stated in reply to this Special Civil Application that they have strictly followed this principle while terminating the services of the petitioners No. 2 and 3. In view of these facts, I do not find any merit in this contention raised by the learned counsel for the petitioners also.

In result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.

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